

COMMISSIONERS APPROVAL

GRANDSTAFF *CG*

ROKOSCH

THOMPSON *AT*

CHILCOTT *gc*

DRISCOLL *KD*

PLETTENBERG (Clerk & Recorder)

Members Present.....Commissioner Carlotta Grandstaff,  
Commissioner James Rokosch, Commissioner Alan Thompson, Commissioner Greg  
Chilcott and Commissioner Kathleen Driscoll

Date.....February 20, 2008

Minutes: Glenda Wiles

► The Board met with Juvenile Detention Supervisor Cal Robinson and Juvenile Detention Officer Lori Roderick in regard to funding cuts. Also present was Deputy Chief Probation Officer Clint Arneson. Cal stated in the past they have received grant money from the state for detention funding. They have a legislative intern and committee at the state level and the intern is now looking at how those monies are being utilized; thus there is a possibility that the funding could be in jeopardy. In the past this funding has totaled up to \$35,000. 98% of this money funds the detention center and the state also wants this money to be utilized for alternative centers. Broadwater County Commissioners wrote a letter to this legislative committee noting they do not want this funding changed. Lori also noted the Casey Foundation is pushing to get rid of juvenile detention facilities, which would house the juveniles at home or at a state regional facility.

Commissioner Thompson stated they need to find out the details before the Board writes any letters. Lori noted J.G. Shockley is one of the State Senators that want to close the juvenile detentions down. It was noted Ravalli County is a good juvenile detention facility but there might be others across the state that are not as good. Commissioner Driscoll suggested the intern committee and J.G. Shockley be invited to tour Ravalli County's facility. If the local teens have to be housed at a regional facility, the county would be responsible to transport the juveniles and pay for the regional housing which is what occurred prior to 1997 and it 'broke the bank in Ravalli County' so to speak.

Discussion included the necessary use of a detention facility as a tool for the juveniles because of the short use detention facilities. Since 1997 the citations in Ravalli County

has dropped because the kids don't want to be housed, plus the parents get involved. The Casey Foundation is working on the core process for housing and placing juveniles in an alternative manner.

Clint discussed the alternative placement which includes electronic monitoring. Currently there are 85 juvenile beds in Montana and prior to 1998 there were only 14 beds. Clint also noted within 24 hours the juvenile must be brought before the District Court Judge, and there is public defender representation, so there are some checks and balances of housing the juveniles.

All agreed going back to the old way of transporting juveniles is costly and is not an effective tool in dealing with the juveniles. Clint stated most counties have invested quite a bit of money in the juvenile detention centers and he doesn't think there would be much support for cutting this money. Clint stated this detention facility is a good facility.

**It was agreed Commissioner Thompson will contact J.G. Shockley and invite him to tour this facility along with Clint, Cal, Lori and a School Resource Officer.**

Cal also noted in the future they will need a teacher for tutoring purposes and a nurse to hand out medications. Currently detention staff picks up their school homework, but there is a need for a tutor. Clint stated in two weeks the Probation Office will have a teacher and they could look at sharing some services. Commissioner Grandstaff suggested they contact Literacy Volunteers because they are certified in the GED. In regard to handing out medicine, the Public Health Nurse's Office could be utilized for juveniles.

► The Board also met with Clerk and Recorder Regina Plettenberg in order to certify a list of judges for the next two years and to certify the precinct map which will include the City and Town annexing. Commissioner Grandstaff and Commissioner Driscoll were not present for this meeting. Regina stated every other year the judges must be trained. Most of the 2008 Election Judges listed have served before. The list is sent to both political parties for review. Regina noted they have extra judges trained because of absences etc. **Commissioner Thompson made a motion to accept the list of 2008 election judges. Commissioner Chilcott seconded the motion and all voted "aye".**

Regina also presented a precinct map that was drawn in 2003. This map has not changed much. GIS did an update for annexations. Commissioner Thompson asked about the Corvallis West boundaries which did not include Pinesdale. Regina stated she will correct the language to include west of Highway 93. **Commissioner Chilcott made a motion to accept the precinct map as amended (correction noted by Commissioner Thompson). Commissioner Thompson seconded the motion and all voted "aye".**

Minutes: Beth Perkins

► The Board met to review the draft zoning regulations and Clarion's diagnosis. **Commissioner Chilcott made a motion to continue until Monday February 25<sup>th</sup> at 4 p.m. Commissioner Driscoll seconded the motion, all voted 'aye'.**

► The Board met with Planner Shaun Morrell to discuss and possibly decide on the processing of a voluntary zoning district. Present were Planning Director Karen Hughes, Planner Randy Fifrick, and several members of the community.

Commissioner Grandstaff called the meeting to order and requested an overview.

Karen stated they have two districts half way through the process and one has a district boundary created and the proposal for the regulations. Once a proposal is submitted they would go through a public process. She stated there is interest of other areas to have a voluntary district. Karen stated her concern is with prioritizing and how to process the voluntary zoning districts or not. She stated no review has been done by Planning Staff. Commissioner Rokosch asked about the process used. Karen replied it is a linear process.

Commissioner Driscoll asked about the effects on the budget. Karen replied the only one she can comment on is the one with the regulations proposed and it is an average of 60 to 90 hours.

Commissioner Thompson asked why the two are not moving forward. Karen replied the Planning Department is requesting a recommendation of the Board for prioritization. She stated they are in the middle of implementing countywide zoning. Every time a voluntary zoning district comes into play, there is a set of new regulations and it has to be implemented into the countywide zoning efforts. Commissioner Thompson stated he would like to see more voluntary zoning districts. He stated it is a clear case of Planning needing to prioritize and handle the workload. In his point of view, Planning should move forward and let them be established. Commissioner Driscoll stated she agrees with Commissioner Thompson. Commissioner Rokosch stated it is a resource conflict. It needs to be addressed. He suggested putting the voluntary zoning districts on hold until after countywide zoning is in place. Commissioner Chilcott stated he understands the time constraints of the Planning Office and the work load and he is very proud of the Department. However, the closer the zoning gets to the people, the closer the government is to the people and the better the decision is going to get.

Commissioner Grandstaff stated her belief is the policy is going to be driven by the resources. Commissioner Rokosch suggested having the regulations of the voluntary zoning district drawn up and then incorporating it into the countywide zoning effort.

Commissioner Rokosch stated to have a policy. Karen replied she would need public comment before consideration.

Commissioner Grandstaff opened public comment.

Penny Howe asked if the Board of County Commissioners read the particulars on the Planning website for voluntary zoning district. Commissioner Grandstaff replied yes, she has. Penny stated there are three choices. Regulations are not mandatory. Karen replied it is not required for people to submit draft regulations for the application to be processed.

Mike Grenell stated they are asked to go to the CPC meetings and the growth policy to be followed 4.3A – Voluntary zoning districts. He is now hearing Planning is saying they don't want to follow the growth policy; either follow it or not. The citizens are paying \$450 for this and it is the only revenue source for this project. He does not know the legal obligation but there is a moral obligation. It is not the people's fault Planning is understaffed, it is the responsibility of the Board.

Russ Hunt stated the surrounding neighbors zoned and it was a large parcel. People ask to be zoned. How can you lose?

Jenny Stoddard stated this leaves a bad taste in the mouth. 1 per 2 and streamside setbacks have been discussed and now they are stopping the public process to see how countywide zoning goes. It will turn off the people they are trying to turn on to zoning. The citizens did not take a vote on countywide zoning. This has always been a public process. The Board is leaving a bad taste in the citizens' mouths.

Quinty Smith stated she agrees with them to a point and has listened to the Board and Karen. Yes it is the Planning Department's job but she is sure the people don't want to pay more taxes to have additional staff. It might be a good compromise for those who have paid the money, done the work and have completed the requirements for the voluntary zoning districts to move forward. She suggested having the ones not already in the process to hold off until December that way Planning will have the pressure taken off.

Timothy Mitchell stated the County has been involved in three lawsuits with time lines. Is the County not setting themselves up for more lawsuits? Commissioner Grandstaff asked if Timothy is referring to the Lords case. Timothy replied yes. Commissioner Grandstaff stated there were statutory time lines involved in those cases but it is not the situation in this case. Timothy asked if people will be able to still apply for voluntary zoning districts after county wide zoning is in place. Karen replied it would be a change of zoning not a variance request.

Jani Summers stated it is a public right. She thinks it is a little short sighted to consider one but not all.

Jan Wieniewski stated he bought a life time guarantee battery and it died and then went to the dealer and he refused to replace it. He asked him why. Words mean things and you

can't take it away. People have the right to their voluntary zoning districts. It should move forward.

Mike Grenell stated this is what is exactly happening; the Commissioners are taking away the right of the citizens to develop the voluntary zoning districts. The growth policy states to a need to develop voluntary zoning districts. Commissioner Driscoll stated money limits the ability and law limits the ability. The Board has a huge responsibility to take care of the law and the money. Government can do so much stuff but it has to be done right. She appreciates the input but she also has the responsibility to do it right.

Commissioner Grandstaff asked what is going to be the reality of processing these applications. They are going to be put on a back burner while other high priority items are being done. The Planning Staff does not have the staff to process all these applications at the same time.

Jenny Stoddard stated as whole county the enforcement has not been happening for years. Commissioner Chilcott stated before the countywide zoning process, there was a back log of subdivision reviews. Jenny stated it will not be over in November for the workload for the Planning Department. It did not happen just because of zoning either, but why is the fiduciary responsibility being focused on something that has not been voted on by the people. Commissioner Driscoll stated from her point of view, the Board has a responsibility because it was a message of the citizens. There may not have been a mandate but a need from the citizens.

Russ suggested the Board allow the voluntary zoning districts to be accepted but not go forward until after the countywide zoning is in place, at least it is something. Commissioner Rokosch stated there are a number of subdivisions that have been added to the Planning Department's workload due to the recent court decision and some have been contracted out to others for review. There is going to be a role the Planning Staff will have even with those subcontracted. The Board can leave things as they are but there is no statutory timelines for voluntary zoning district and there is for these subdivisions.

Commissioner Grandstaff stated she likes Russ' idea of allowing the petitions to continue but be kept on hold until after countywide zoning is in effect. She suggested allowing the two in process to move forward. Commissioner Rokosch stated it is up to Planning with their workload. Commissioner Chilcott stated he would like to blend the voluntary zoning districts into the countywide zoning. Karen asked would they be honored. Commissioner Chilcott stated it would be a big task. If Planning accepts petitions, these people will be waiting for months. He does not see why the Board would be spending time drawing lines on a map. He stated when the application is accepted it needs to be processed.

Commissioner Grandstaff requested Board deliberations. Karen requested clarification. Commissioner Grandstaff suggested accepting the applications, and then have it be the Planning Department discretion when they can get to them. Commissioner Rokosch suggested processing the ones in motion and applications received after go to the CPC's for processing.

Quinty asked if they haven't done the regulations, it falls on the Planning Department's shoulders? Karen replied in order to continue processing, yes.

Terry Nelson stated the settlement indicates to have an outside source. Could that be implemented in these cases? Commissioner Grandstaff stated it is something to think about.

Nikki Sardot stated her area would take the North side off of zoning. She stated her voluntary zoning district has been working on it for a year. She asked to be put on number three on the list. Karen stated it is up to the Board. Commissioner Grandstaff asked if she would be willing to go with Terry's idea of having an outside consultant. Nikki replied yes but not the CPC for review. Karen stated every time you have a countywide effort and chip away the pieces, it takes time and effort. It does not serve the concept of ease of administration. Commissioner Chilcott asked Nikki why she would not bring it to the CPC. Nikki replied they are not asking the right questions. They have 1 per 80 and 1 per 60. Commissioner Chilcott stated the CPC's have a number to shuffle and come out with their approach.

**Commissioner Rokosch made a motion to process the two proposals that have submitted fees and gone through the protest period, and accept any other applications with no further direction. Commissioner Grandstaff seconded the motion.** Commissioner Chilcott asked what they are going to do with those applications. Commissioner Rokosch stated he does not know what they can do legally. Commissioner Driscoll stated she agrees with Commissioner Chilcott. Anything submitted by the citizens should be looked at even if it is by the CPC's.

**Commissioner Driscoll amended the motion to bring the applications forward to the CPC's and not process until November 1st. Commissioner Grandstaff seconded the motion. All voted 'aye'.**

► The Board met with Internal Auditor Klarryse Murphy for a mid-year review of FY 2008 budget. Present was Accountant Jana Exner.

Klarryse stated this is a half year review and a lot of the revenues are not received until Spring. She reviewed the general fund stating the septic site evaluations are at 29%. Civil defense and Video machine licenses collected \$2,375 because the Department of Justice is behind in payments. Clerk & Recorder fees projected are at \$70,000 under the estimate. The reason is people are not buying homes. This has affected records preservation also.

Klarryse stated flu shot revenue is \$11,000 and they had an estimated \$29,000. Public Health Nurse Office stated they need to clean up the Medicaid portion of it with an address correction. Administrative fees for investments projected \$40,000 at half year is at \$23,000. Justice Court #1 fines are under \$19,000 of estimated and Justice Court #2 is under \$33,000. Investment earnings are at \$96,000. The general fund has received all of

the allocation of PILT. She stated the expenses for indigent burials are up. She stated the budgeted \$4,000 for the burials is at \$3,146. Justice Court jury costs are ok.

Klarryse stated the Public Health Nurse's vaccine line has been maxed out. Over all Public Health Nurse budget is at 48%. Commissioner Rokosch asked about the Planning Department budget. He questioned the department because they are looking at \$70,000 needed that is not there. Klarryse replied she would answer the question further on down the line.

Klarryse stated facilities look good. Road Department revenues look good and he has collected new revenues such as road permits and approach permits. Dust abatement fees are at 15% but it is before spring. Purchase services were budgeted at \$33,500 and he is at \$29,000. She discussed Road Department's revenues and expenditures and stated they are at 52% for the year.

Klarryse stated the Fairground is at 50% for the year. The Airport is doing excellent, they are at 39%. Forest Service building revenues are going to the reserve fund for maintenance. Klarryse stated there is an outstanding bill for the FAA for \$18,000 for snow equipment. District Court looks good. Youth Detention is at 79% on the overtime but otherwise fine.

Klarryse reviewed the Planning Department. Projected was \$106,000 on revenue for administrative fees in the general fund and collected \$29,000 this year. Klarryse projected a loss of \$44,000. She stated many lines have not been used at all. Total revenues are at 51% for the year but it is not including PILT money. Commissioner Rokosch questioned the monies for the external subdivisions collected. The budget has gone up \$143,000. Local options have flat lined it. Sheriff Office is at 52% overall for the year.

Minutes: Glenda Wiles

► The Board met with Planning Staff, Planning Board Members, and the County Attorney to discuss Subdivision Review as well as the continuance of the discussion and possible decision of External Subdivision Review Contracts from the February 19<sup>th</sup> meeting. Present at this meeting were County Attorney George Corn, Civil Counsel Alex Beal, Deputy County Attorney Karen Mahar, Planning Director Karen Hughes, Planning Staff, Planning Board Members, Environmental Health Staff and numerous citizens. (See attached Public meeting agenda and goals).

Commissioner Chilcott asked where this list of questions generated from. Commissioner Driscoll stated while three Commissioners were at the MACo meeting, Commissioner Rokosch, Commissioner Grandstaff and the Planning Staff came up with this list of questions. Commissioner Grandstaff stated the County Attorney has reviewed nine questions that Commissioner Grandstaff and Commissioner Rokosch brought forth. George stated Attorney Alan McCormick reviewed the list of nine questions and

indicated he will need numerous hours to review and answer these questions. Commissioner Grandstaff stated the nine questions are about subdivision review.

Question #1) George stated the answer is found in the Subdivision Regulations, Section 3-2-69 (A) VI; which allows the Board of County Commissioners to send or ask questions to the Planning Board. Opponents and proponents and questions can be directed to those agencies via the Planning Department before the public hearing. Commissioner Driscoll asked how they can ask those questions when they cannot look at the proposals. George stated that is part of question #6. Answer: Individual Commissioners have the same access to applications as does the public, but the quorum cannot ask prior to the public hearing. Commissioner Grandstaff stated there are a few applications they have not reviewed; therefore can they go to the planning department and look at the applications? George replied yes, the individual Commissioner can go and look at the applications. Commissioner Chilcott asked how ex-parte communication applies to the application. George replied there is a distinction between looking and asking questions of the applications. Due process is attached to the applications, thus ex-parte communications (back door communications) is not appropriate and are forbidden because the court cannot review any of these conversations. (Ex-parte is soliciting from someone outside the public record). Commissioner Rokosch asked if an individual Commissioner were to ask an outside agency certain types of information, would that be considered ex-parte. George stated the question should be in writing to a public agency as that has to be part of the planning application process. Karen stated if there is pertinent information they would like to see addressed, the Planning Department needs this information to keep everything on the right time line and to keep a record of what the Commissioners have asked for. George stated if an individual greets a Commissioner at the Supermarket and they begin to tell you what they think, the Commissioner should tell them this is an administrative process with due process, so they need to tell the Planning Department in writing what their thoughts are, then the Commissioners can consider it if it is in the record.

Commissioner Chilcott asked about the difference in application process. George stated there is no threshold as long as there is a record of the information, question etc. Alex stated if it is still in the sufficiency process, the written question can be given to the developer. George stated in the Aspen Springs matter, George sent a letter to MDOT asking them to contact planning about this information. This letter is then in the public record. Commissioner Grandstaff asked if a citizen wanted to give an opinion, can they give that opinion verbally or must it be funneled through the Planning Department. George stated if the question or opinion is not given to the Planning Department, the Commissioners run the risk of having a part of ex-parte communication.

Commissioner Chilcott asked at what point does the Commissioners violate the public meeting law. George stated it appears it is when a quorum is present, not just when two Commissioners are present. This is found under the public meeting laws for quorum. Karen stated if a quorum is not present, no decision can be made, so no substance of the decision can be made. George stated that happens in the legislature all the time; the court

will not hold the Commissioners to any higher standards. Right now there is no case law to address this particular issue.

Commissioner Rokosch asked if individual Commissioners can see information from planning and direct planners to obtain information about substantial effects of the subdivision. George stated that is a policy decision with the Commissioners. Individual Commissioners may have questions, but they should be run through the department head otherwise it creates too much confusion. Alex stated the only legal issue would be if a quorum directed planning, but not as individuals. Commissioner Chilcott stated it seems like there is a difference of a Commissioner asking a question or making a decision. George stated the Commissioners can work on a policy in order to ask those questions. Commissioner Driscoll asked if she could ask the Planning Department a question or should she address it with the quorum first. George stated the Commissioners should make that determination. Karen Mahar stated the regulations give directions to the Staff in regard to the requirements they are giving. When regulations are formed, the best thing the Commissioners can do is follow them. If something is not working, the regulations can be changed, but by following the set policies it is found to be efficient and is legal if any litigation were to occur. She also noted having those policies in place might reduce the number of questions the Commissioners have on a subdivision. Commissioner Rokosch stated that is a matter of interpretation i.e., generic information is sometimes submitted rather than something specific. Karen stated that is the second part of question #1. The process allows the gathering of information so questions and discussions can occur at the public hearing. George also noted the Commissioners are bound by the six criteria. Alex stated planning is a large and well trained staff so the Commissioners should clarify what you are looking for, because there is a statutory time line. George stated that is an excellent point; sit down with planning and have a discussion about what the Commissioners need to see (don't be specific about any one subdivision however).

George stated in regard to question #1, the Commissioners are fact finders and they decide what facts apply to criteria 3-2-6 C. Thus, findings of fact are a procedure where the Commissioners can solicit additional information. George stated this should be done on a one time manner. Alex stated hopefully no new information will come from the new information. Commissioner Rokosch stated there could be a scenario where they raise new information by those questions that were not part of the application process, because at the public meeting the public has not heard of that information. Karen Mahar stated the Commissioners cannot postpone their decision beyond the 60 days. George stated that might allow for another meeting but it must be held within the 60 days. Commissioner Rokosch asked if any new information would suspend the 60 days time limit. Alex stated it suspends the time but does not re-start the time line.

Question #2: George stated the Board of County Commissioners is the fact finders and they decide if the information is credible and might need mitigation. Issues are subjective determination from the information. They Commissioners are like a jury; the fact finders with decisions that need to be based on credible evidence. George stated just because a Commissioner might have a 'vague discontentment' over an issue does not

make it credible evidence. In other words, it is important to keep the emotional terms out, stick to the facts for approval or denial. Commissioner Thompson stated each Commissioner has a different idea of the importance of facts. Commissioner Driscoll asked how do they decide if they have enough information (example of water) to make that decision. Commissioner Rokosch stated they are now looking at water supply for fire suppression, and the question becomes if that \$500.00 is truly a mitigation of the need. Commissioner Driscoll stated right now that amount of money is just 'pulled out of the air'. Commissioner Chilcott stated the Fire Council are the experts and they came up with those figures, thus that amount is credible. Alex stated that is a policy decision by the Commissioners.

Karen Mahar stated the court has a standard. They are going to look to see if the decision was arbitrary and capricious. She also stated they would look to see if a reasonable person would understand how the decision was made which actually leads into question #3.

Question #3: George stated the Commissioners determine if the mitigation is sufficient, i.e., is the mitigation based on fact. A good example would be the Fire Personnel such as Fire Chief Russ Giese and the other fire personnel who others worked on those contribution amounts. George stated it comes down to a fact based decision. In regard to water, unless there is a factual basis to go against DEQ or the local Sanitation, the Commissioners should simply state their concern. George stated a study would provide some facts, and it is important the Commissioners develop the factual basis for any decision they make. Karen Hughes stated Red Lodge did a jurisdictional study which affected the subdivisions. The best way is the address the regulations.

Question #4: George stated the answer to this question is 'yes', however the Commissioners must make a sufficient record showing the insufficiencies of Section 3-2-5. If insufficient, the Board of County Commissioners must make sufficient findings for each criterion that is affected and if the mitigation is insufficient. Commissioner Grandstaff stated recently the Commissioners have asked the developer 'is that your best and final offer' (for mitigation) and is that ok to do? George stated that is ok to ask. Commissioner Driscoll asked if that was a form of extortion. George stated no, the Commissioners have the right to ask. Commissioner Rokosch asked at what point the Commissioners 'can keep that ball in the air'. Karen Mahar stated the leading case requires the governing body (Kiely Case) to give 'earnest consideration to the landowners plan'. They need a factual basis tied to the 6 criteria, to carefully consider if in-sufficient or sufficient. Do not dismiss something just because it is out of hand. Commissioner Driscoll asked when the planners give them something they feel is mitigated, how they can question that. Karen Hughes stated they give them something for their consideration. Those are based on facts, law etc. The Commissioners hold the public hearing; the planners simply give recommendations at the time. Commissioner Driscoll stated one of her concerns is the lack of the traffic studies. George stated if you do not feel you have sufficient information based on facts; then it is in the Commissioners purview to back that up. Commissioner Chilcott stated that goes back to the subdivision regulations, and the regulations follow AASTHO standards. Karen stated there is a difference of between

meeting a required standard and mitigation, and the Commissioners should not blur those issues. She stated if the Commissioners need more information and have the resources to obtain that information, they can ask for it. George stated the Commissioners can ask MDOT for traffic studies if they think the information is pertinent. Commissioner Thompson stated that brings up a secondary question such as when they obtain information from the road department or a hydrologist and that information 'says X'; how much leeway do the Commissioners have to disregard the expert and find their own finding. George stated if the expert has a factual basis, he is an expert, and to go against that it would be arbitrary and irrational. Commissioner Thompson stated if you have two different hydrologists with different opinions, then would it be up to the Commissioners to determine their factual basis. George stated that is correct; but it depends upon the study or facts. Alex said the developer could meet the road engineering based on the AASTHO standards, but it does not mean the Commissioners like the way they did the road. Karen stated one witness might be more credible than the other, so the Commissioners would have to have a factual basis not to follow that particular expert. The Court will then look to see if a reasonable person would make that determination. It is important to weigh credibility and significance. George stated if a lay person says there have been six accidents on a road that is affected by the subdivision, get the MHP records and find out. George stated the Commissioners do have subpoena power.

Question #5: George stated the answer is yes, at the hearing, which goes back to question #1, as the Commissioners are not limited to the staff report. You can have discussions and solicit relevant evidence (Regulations 2-3-6(1) VI). The regulations give the Commissioner authority to request more. It could be new information, but it must be related to the criteria. Commissioner Chilcott asked in regard to the Westmont Development (Aspen Springs), new information had come back and the Commissioners denied the variance. He asked if they could continue through the review or should they suspend the hearing. George stated they should go ahead and finish the hearing and see if there is a need for new information. Alex added if that were to occur, they should not do any board deliberations at that hearing.

Questions #6 and 7: George felt they answered with previous discussion.

Question #8: George stated the Board of County Commissioners can solicit information as the role of fact finder, but when they are approached prior to the hearing with reports of pertinent information, they should tell the person to submit the information in writing at the appropriate stage. That ties in with the ex parte communication. Alex stated if there is some information the Commissioners feel is relevant, they should give that to the planning staff as quickly as possible so the issue is addressed.

Question #9: George stated the regulations (3-2-6 Sections C through E) outlines the procedure and D says if it has an impact on the findings and conclusions for making the decision, there is no provision to remand the issue back to Planning. In other words they can keep the matter before them and have a second public hearing. If the information is significant enough and it has an impact, they should address it. Alex stated 'credible' means you give it weight. If it does not have any weight, it does not go into your basis

for a decision. The Planning Department can always give additional information under this regulation after discussion at the initial public hearing.

Commissioner Grandstaff thanked George and his staff for their time.

Commissioner Grandstaff opened the floor up for public comment.

Road Supervisor David Ohnstad stated they analyze every county road in depth and when the regulations are met, they do a traffic analysis, so those provisions already exist.

Terry Nelson asked about the voluntary contributions; SB 185 says impact fees have a certain manner; so how does that fit together with the requirements of the developers. George stated impact fees are collected in Gallatin County, Missoula County, etc. SB 185 is the impact bill that was adopted in 2005 and long before that the counties and cities collected. Alex stated the local government and subdivision and platting act allows this collection. Ravalli County has only recently decided to collect these. Alex also stated the Senate bill is for capital. Terry asked about the unconformity. George stated it could be arbitrary, but looking at facts such as the closeness to town, services and size of subdivision bear to the factual basis of that.

Jason Joost asked about farm land and the local importance classification. Renee stated the local soils scientist states we should not use this classification, because the farm land of local importance is to determine the projects that are more suitable for farm ground and it does not identify the land suitability. They sent maps and recommended the county not use that recommendation for farmlands of local importance because it was not meant to be used in subdivision review process. They recommend the two maps from the state. Renee stated there is a level of criteria in regard to the soils which they have. George stated that raises a lot of questions. Jason stated the farmers don't want to remain as a farmer when they can not make any money just because the ground is determined as agricultural. Commissioner Rokosch stated he has an issue with that as the six criteria asks the Commissioners to assess the use and loss of agricultural land. This issue has a scale of importance, and it is related to measurable factors. Commissioner Rokosch stated until there were five Commissioners they never looked at the mitigation of the loss of farm land. Now they have discussions about the open lands issue. Looking at the classifications and scale has a rational basis for determining the relative importance and sense of value for the agricultural productivity. The communication from Mr. Skovlin came from the conservation district as they didn't want the farmland of local importance for classification use. They had no rational for not using that. Therefore he has an issue with that. That very agency is using that criterion to determine if those lands can be given conservation easements under NRCS.

**Commissioner Chilcott made a motion to continue this meeting after the next agenda item is addressed. Commissioner Rokosch seconded the motion, all voted "aye".**

Commissioner Thompson wanted to comment on the farm land of local importance. He stated Commissioner Rokosch and himself disagree, which is a personal opinion of Commissioner Rokosch not a quorum opinion. When Jay sends us a letter and says don't use this; that is something he is wanting. These are individual comments being made by the Commissioners such as Commissioner Rokosch just now. Commissioner Rokosch and I disagree upon the issues of agricultural use being prime land and of state wide importance and how agricultural land is affected by neighbors. (The break was then taken).

► In regard to the other agenda item on the calendar for approval (Contracts for WGM and WWC); Commissioner Rokosch stated under exhibit A in regard to sufficiency review; if planning can not answer the questions, then should they have some language as to the interpretations of the engineer or the Commissioners. George stated he has not reviewed the contract but Alex did. Alex feels the contracts are sufficient; the language could be made clearer in regard to the engineers' interpretation, as this check list is very narrow. George asked if they asked WGM that question. WGM Representative Kristen Smith stated if the questions were forwarded, they would answer these questions under the authority of the contractor. Karen Hughes stated this can be added to the public review, or in the public hearing process. Alex stated if the Commissioners do not like the report the engineer comes up with they can look for changes, there is a simple remedy to any flaw in the contract. Commissioner Rokosch stated the whole idea is to have external review. Karen stated they would not spend any staff time on this; rather they would simply refer these questions to the contractors.

**Commissioner Chilcott made a motion to accept the contracts from WGM and WWC as presented. Commissioner Thompson seconded.** Discussion: Commissioner Rokosch stated this is a specific reference and it is more if we want to see the information brought to us. They should provide that directive to the engineer. Commissioner Grandstaff stated that is covered in the provisions. Alex stated the Commissioners are paying them for the hour so they should address those concerns. Commissioner Chilcott stated Ravalli County is not paying for this review it is the litigants in the Lords suit who are actually paying for that review. George stated this comes down to whether the Commissioners fall under different agencies or the public. This question is not as clear as they would like it to be, as the individual Commissioners have the right to ask those questions. Commissioner Chilcott stated as Commissioners, they don't give up their rights as the local citizens have. Alex stated that is a policy decision on the Commissioners' part. Commissioner Rokosch stated the Commissioners are different as they are trying to obtain the best information in order to make a good decision. Alex stated they can not change the language in the contract unless they knew what the Commissioners want. George stated one way to handle this is if an individual Commissioner asks a question and it does not get answered, it will come to the public hearing and it will be answered at that time. Commissioner Rokosch stated if it deals with an element of sufficiency they lose that important information. Alex stated with the Aspen Springs Subdivision, they learned they could go back at any time and deal with the sufficiency. **All voted "aye".**

► The Commissioners then returned to the meeting with County Attorney George Corn in regard to the various questions they had for subdivision information.

Claire Kelly asked about ex-parte' and de-facto issues noting a clear violation of being deprived of property without due process. She stated this violates the constitution. George as long as you follow subdivision process, they are under Montana Law and the US Constitution, and therefore it does not violate property rights. If a decision goes too far it could be a property takings issue. Commissioner Chilcott stated the Commissioners did not enact '1 for 2'; the public did. If it did not meet final approval it was part of the 1 for 2.

Jeanette Joost stated her feeling after hearing this discussion about ex- parte and expert witnesses, is there seems to be a common thread or 'mindset' by the Commissioners as to how they can walk into a process with a predetermined opinion of how they want to have something happen and then use the process to get that outcome. She stated she is not hearing a careful consideration of the facts; rather what she is hearing is where they feel they must stop before they are capricious and arbitrary. Commissioner Grandstaff stated she carefully considers the criteria, and in the last 8 months they have had 20 subdivisions and only denied 2. Jason Joost stated what he and his wife Jeannette are hearing in this discussion is to obtain permission to act on their personal feelings. Commissioner Rokosch stated that is a wrong impression, because what he is attempting to obtain from this list of questions to the County Attorney is a clear basis on how to approve a subdivision when the ability to substantiate a basis for denial is not as clear. The whole purpose is to determine what constitutes arbitrary and capricious. In some aspects it is clear and in others it is not. It will always come down to a collective judgment call. We look to the credible evidence, as we want to make wise decisions, and we look case by case. However, they want to get the right procedure that addresses the consistency of asking for the right information and to stay within the law.

Commissioner Grandstaff then adjourned the meeting noting she appreciates the County Attorney input.

To: Planning Board, BCC and Planning Department of Ravalli County.  
Dated: 02/19/08

Ben Hillicoss here. Members of the PB were asked to submit in writing any questions or items we would like to discuss at the Joint PB/BCC meeting at 3:00PM on Feb 20<sup>th</sup>.

I would like to propose the following additional questions or topics to be addressed during our discussion of Subdivision review.

For clarity and future reference I will number my questions and put them under the same topic list used by the Planning Department in their list.

Under the topic of **Staff Review/Reports** I would like to add the following questions.

- 1) To my way of thinking there are a number of things we should require in (most or all) subdivisions over a certain size. These requirements are currently not part of our design criteria within the subdivision regulations, but we frequently ask developers of large projects to add them. Sometimes they do but frequently they do not. Can we update our Subdivision Regulations to get these items addressed or how do we get them addressed? A partial list follows:
  - a) Sidewalks or a walking path to provide a safe place for kids to walk to bus stops in the winter besides walking down the road.
  - b) Shelters for kids and others at bus stops. Some day we should have bus service besides school buses.
  - c) Bike paths and right of ways, that connects to the county, state and other private bike paths in adjoining or future probable subdivisions. Some day we should have bike paths along all major feeder roads.
  - d) Roads out of all subdivisions, connecting to other roads and other adjacent subdivisions. Such that people and cars do not have to go out on a highway and ½ mile or more around to get to some other house in an adjacent subdivision. Right of ways so that someone does not have to trespass or climb fences and walk ½ mile to visit a house in an adjacent neighborhood or subdivision that is on a different cul-de-sac. The essence of "walks able communities"!
  - e) Alternative exits (at a minimum emergency exits) out of all neighborhoods containing 10 or more houses, or on a road over ½ mile long with more than 6 residences on it
  - f) Community Parks/Gardens/Play grounds/pastures and barns. I think space for most of these should exist (be required) in all new subdivisions wherever the density is greater than some limit, say one house per acre. In many cases these should be open to the public or at least to people from adjacent developments. We should have standard community maintenance agreements not just road maintenance agreements. Some version of which is required for subdivision approval. These agreements should require that easements and common areas be maintained by the neighborhoods. If another smaller subdivision is created adjacent and/or connected to one of these neighborhoods, the new subdivision should be required to join or interface with the existing home owners maintenance group. If the association fails to maintain the existing community common grounds, the county should have the right (responsibility) to take over the maintenance (ownership?) of the common ground and tax or charge the existing landowners a maintenance fee or additional tax. If the homeowners in an existing subdivision wish to turn their common ground over to the county and

pay a maintenance fee to the parks department, they should be able to petition the commissioners to accept that responsibility. What are the (land) tax law implications of community owned common grounds and facilities such as gardens, pastures, sheds etc.? We should also consider and encourage community water, sewer, and community power generation and distribution systems where economically feasible. Many villages and small cities in other parts of the world have incinerators and community heating plants that burn their trash and provide heat and hot water to most of the homes in the city. This should be encouraged in dense developments. Wind or solar generation could be a financially attractive addition to many subdivisions, but is much more expensive and difficult to retrofit into an already built development. The addition of high tech wood burning stoves and fireplace inserts should be encouraged.

- 2) If a Planning Board member has to miss a meeting and has a major concern over an issue that may not be or was not raised during the Planning Department or Planning Board hearing, what is the proper way or ways to communicate this to the commissioners? What if a planning board member raised an issue and feels that the resolution taken by the Planning Board was not satisfactory to resolve the issue. Can a Planning Board member submit a minority report and if so, what is the proper procedure to follow. Can we submit a statement without attending the BCC meeting? When and how can Planning Board members comment to the commissioners? I have attended BCC review meetings only to find that I did not get an opportunity to comment on an issue of concern to me.
- 3) What if anything other than time and effort is keeping us from providing more detailed definitions and requirements to what does and does not meet the requirements of the 6 criteria. For example why can't we say that any subdivision that takes more than 5 acres of prime agriculture land out of production (say divides it into lots smaller than 5 acres) must replace this agricultural land somewhere within the county.
- 4) Is there anything in state law that prohibits Ravalli County from establishing additional criteria beyond the 6 defined in state law, which must be met for a subdivision approval?
- 5) About the year 2000 or 2001, Sony LaSalle and I worked on and developed a set of proposed revisions to the subdivision regulations to deal with the issues of buildings built in the wildland/Urban Interface. We worked with the Firewise groups and the Ravalli County Fire counsel. These proposed Subdivisions Regulations have twice been submitted to the Planning Department for consideration by the PB/BCC. Both times they have apparently never risen to a priority level where some action has been taken on them. In the meantime, we get new subdivisions to review and approve in potential wildfire areas, and houses keep being built and remodeled in these areas. Should this continue, or should we make a decision on whether or not to revise our County Subdivision Regulations to address this area?

#### **Under the topic of Planning Board Review/Meetings!**

- 6) Various members of the Planning Board have suggested that we (the PB members), should work on a volunteer basis on some of the more long range County planning issues, especially since our workload of reviewing subdivisions has, for now at least, greatly diminished. Suggested projects include, revising the subdivision regulations, proposing a plan for Zoning phase II, investigation issues of sustainability and cumulative impacts of growth. At our last PB meeting, we formed a new

subcommittee of PB members who are interested in addressing the development of a proposed approach to Zoning Phase II and sustainability. Some discussion, and feedback from the BCC on their views of priorities would be most welcome.

- 7) We keep approving subdivisions and the BCC has reached agreements with some developers to make cash donations to help mitigate various impacts. I keep asking what happens if we reach an agreement with a developer to make a contribution to the school of say \$500 per lot to offset some impact to the schools, and later the county/school approve an impact fee for building new infrastructure. What do the developer and eventually the builder of the home have to pay? Does the homebuilder still have to pay the full impact fee? Is he or she given a partial credit for what they have already paid? Or do they not have to pay the impact fee because the subdivider paid a fee as a condition of approval of the subdivision.
- 8) If the PB wishes to establish their own additional findings of fact, how do we do this and communicate this to the Planning Department staff and BCC?
- 9) I would like to discuss the issues around accepting cash in lieu of parkland as it is currently implemented.

I apologize in advance for any typos or wording problems in this document.

Regards, Ben

**Carlotta Grandstaff**

*Wed. Feb. 20*

**From:** Karen Hughes  
**Sent:** Thursday, February 14, 2008 10:11 AM  
**To:** Carlotta Grandstaff  
**Subject:** RE: Subdivision review meeting

Great!

*Karen Hughes, AICP  
 Ravalli County Planning Department  
 215 S. 4th Street Ste F  
 Hamilton, MT 59840  
 Phone (406) 375-6530  
 Fax (406) 375-6531  
[khughes@ravallicounty.mt.gov](mailto:khughes@ravallicounty.mt.gov)*

**From:** Carlotta Grandstaff  
**Sent:** Wednesday, February 13, 2008 5:13 PM  
**To:** Karen Hughes; James Rokosch  
**Subject:** FW: Subdivision review meeting

Karen,

Here is a list of questions Jim and I posed to George today that could be discussed at the Feb. 20 meeting. Jim, George and I also talked about an expanded role for the planning board. We can talk to you about this tomorrow.  
 Carlotta

1. How does the BCC develop findings of fact and the credible evidence to support them as they pertain to the six subdivision review criteria, particularly when the findings go beyond, or are different from, the conclusions in the staff report?
2. How does the BCC determine whether effects of land development are significant enough to require mitigation?
3. How does the BCC determine whether the effects have been sufficiently mitigated?
4. Does insufficient mitigation constitute grounds for denial of a subdivision?
5. Can the BCC request more information from a land developer than has been submitted to the planning department?
6. Can the BCC review a subdivision application at any stage of the review process prior to the public hearing?
7. How does the BCC determine that adequate opportunity for mitigation has been offered to the land developer during mitigation negotiations?
8. Can a county commissioner submit new information about a subdivision at the public hearing?
9. When new information is submitted during a subdivision hearing, how can the BCC determine if the new information is significant enough to remand the application to the planning department/board for further review?

**From:** Karen Hughes  
**Sent:** Wednesday, February 13, 2008 3:53 PM  
**To:** Commissioners Department

2/14/2008

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**From:** Karen Hughes  
**Sent:** Wednesday, February 13, 2008 3:53 PM  
**To:** Commissioners Department

2/14/2008

**Ravalli County Board of County Commissioners (BCC)  
Ravalli County Planning Board  
Ravalli County Attorney's Office  
Ravalli County Planning Department**

**Public Meeting**

Discussion about Subdivision Review in Ravalli County  
BCC Discussion and Possible Decision on Subdivision Review Contracts

**February 20, 2008 at 3:00 P.M.  
Commissioners Meeting Room  
3<sup>rd</sup> Floor, 215 S. 4<sup>th</sup> St.  
Hamilton, MT 59840**

**Meeting Goals**

- Identify and discuss high priority questions/issues for subdivision review in detail
- BCC to complete discussion/decision on subdivision review contracts
- Determine the next steps on other questions/issues

1. **Introductions (5 minutes)**
2. **Review Master List of Subdivision Review Questions – Is anything missing? (20 minutes)**
3. **Identify high priority questions (25 minutes)**

Are the questions/issues below high priority questions/issues for the BCC in subdivision review? High priority for today is suggested to be those questions/issues that need to be addressed to resolve subdivision review contracts and to address concerns about pending subdivision reviews in the immediate future.

- A) Can the BCC request specific information from applicants related to one of the required application items in Section 3-1-5? If so, what is the best mechanism for that to occur and when should it occur in the review process? Following is a list of specific examples:
- (i) Could the BCC request specific water availability/quality information related to one of the required application items, such as the summary of probable impacts on the natural environment (Section 3-1-5(a)(xli))? How could the BCC figure out what kind of water information/studies are needed? Who at the County has the expertise to review the information? Could the County contract a hydrologist or other expert? How would that expert be paid? In this specific case, how might information about water availability/quality be utilized in the subdivision review?
  - (ii) Could the BCC request a specific study on how the change in irrigation practices on a proposed subdivision might affect domestic wells and/or irrigation practices related to agriculture in the area, which may be information related to the summary of probable impacts on agricultural water users and natural environment?

- (iii) Could the BCC request a traffic study for an intersection that includes a State highway, which may be information necessary for a complete evaluation of the traffic impact analysis (Section 3-1-5(xxxiv)) or summary of probable impacts on local services/public health and safety (Section 3-1-5(a)(xli))?
- (iv) Could the BCC request specific information on emergency response times, which may be related to the summary of probable impacts on public health and safety? Or is it the responsibility of the County to provide this information?
- (v) Could the BCC request specific information on the impacts of a subdivision on the viewshed, which may be related to the summary of probable impacts on the natural environment?

**4. Discuss high priority questions in detail (40 minutes)**

**5. BCC Discussion/Decision on Subdivision Review Contracts (20 minutes)**

**6. Discussion on the Next Steps (10 minutes)**

**A) Any necessary follow-up to high priority questions/issues**

**B) Identify any other questions that need resolution related to subdivision review**

**C) Staff (Planning and Legal Counsel?) organizes the questions/issues and suggests priorities for responses**

- (i) Moderate priority
  - (1) What issues could be addressed that do not require revisions to the current subdivision regulations
- (ii) Low priority
  - (1) What issues must be addressed through revisions to the subdivision regulations

**D) BCC determines priority listing and directs staff (Planning and Legal Counsel) to provide written comment on questions**

## **Master List of Subdivision Review Questions**

1. In Ravalli County, what is the goal of subdivision review? What are the objectives needed to accomplish that goal?
2. Pre-application Conference
  - a) At what point can Planning Board or BCC members review the application? (Carlotta Question #6)
3. Application Requirements
  - a) Are there items missing from the required application elements in Section 3-1-5 of the Subdivision Regulations?
  - b) Should the County require certain application elements for subdivisions that meet a certain lot number, acreage, and/or density threshold? Following is a list of ideas:
    - Sidewalks; trails; walking paths to bus stops; shelters at bus stops; bike path network to subdivisions and along major collector roads; road connectivity; alternative or emergency accesses; community parks/gardens/playgrounds/pastures/barns; community maintenance agreements for common areas and trails; encouraging community water and sewer systems; community power generation and distribution; community trash incinerators and heating plants; wind or solar generation; and high tech wood burning stoves and fireplace inserts.
  - c) Ben Hillicoss and Sonny LaSalle proposed a set of wildland urban interface standards for the Subdivision Regulations around 2001. Why haven't these regulations been adopted?
4. Element Review
5. Sufficiency Review
  - a) What additional information should planning staff be requesting under existing items in Section 3-1-5? Can staff request this information now or will it require a modification to the Subdivision Regulations?
  - b) Can the BCC request specific information from applicants related to one of the required application items in Section 3-1-5? If so, what is the best mechanism for that to occur? Following is a list of specific examples:
    - Could the BCC request specific water availability/quality information related to one of the required application items, such as the summary of probable impacts on the natural environment (Section 3-1-5(a)(xli))? How could the BCC figure out what kind of water information/studies are needed? Who at the County has the expertise to review the information? Could the County contract a hydrologist or other expert?
    - Could the BCC request a study on how the change in irrigation on a proposed subdivision might affect domestic wells and/or irrigation practices related to agriculture in the area, which may be information related to the summary of probable impacts on agricultural water users and natural environment?
    - Could the BCC request a traffic study for an intersection that includes a State highway, which may be information related to the traffic impact analysis (Section (3-1-5(xxxiv)) or summary of probable impacts on local services/public health and safety (Section 3-1-5(a)(xli))?

- Could the BCC request information on emergency response times, which may be related to the summary of probable impacts on public health and safety? Or is it the responsibility of the County to provide this information?
- Could the BCC request information on the impacts of a subdivision on the viewshed, which may be related to the summary of probable impacts on the natural environment?

#### 6. Planning Staff Review/Reports

- a) How does staff determine whether the effects of development are significant enough to require mitigation? This question also pertains to Planning Board and BCC review later in the process. (Carlotta Question #2)
- b) Can the County clearly define significant impacts of each of the six subdivision review criteria? For example, the County could define a significant impact on agriculture as any proposal that takes more than 5.00 acres of prime agricultural land out of production.
- c) Does State law prohibit the County from establishing additional review criteria (beyond the six) in the Subdivision Regulations?
- d) How does staff determine whether the effects have been sufficiently mitigated? This question also pertains to Planning Board and BCC review later in the process. (Carlotta Question #3)
- e) Does insufficient mitigation constitute grounds for recommending denial of a subdivision? This question also pertains to Planning Board and BCC review later in the process. (Carlotta Question #4)
- f) How is the Growth Policy currently included in staff's review? Should staff take a different approach?
- g) How should staff deal with bus turnouts?
- h) Why does staff include a condition recommending no wood stoves instead of requiring it? Discussion about recent litigation regarding Lewis and Clark County and building codes.
- i) Why doesn't staff use the Farmland of Local Importance classification when determining the impacts on agriculture? Discussion about farmland classification of soils and impacts to agriculture.
- j) Discussion about current process of parkland dedication and cash-in-lieu.

#### 7. Scheduling of Planning Board Meetings/BCC Hearings

- a) Overview of current procedure
- b) Overview of upcoming subdivision meeting/hearing schedule
- c) Problems with current procedure - Planning staff is having difficulty scheduling hearings for subdivision review. BCC have not been blocking out available time, meetings have had to be rescheduled which costs time and money for re-notification, and meetings are starting late.

#### 8. Planning Board Review/Meetings

- a) Review current procedure for Planning Board review
- b) How does the Planning Board develop findings of fact and the credible evidence to support them as they pertain to the six subdivision review criteria, particularly when the findings go beyond, or are different from, the conclusions in the staff report? This question also pertains to the BCC review later in the process. (Carlotta Question #1)

- c) BCC idea for expanding role of Planning Board. Discussion on the formation of a Planning Board subcommittee to address Phase II zoning and sustainability.
- d) If a Planning Board member misses a meeting and has a major concern, what is the proper way to communicate the concern to the BCC?
- e) Can a Planning Board member issue a minority report if their concern isn't reflected in the Planning Board's recommendation?

#### 9. BCC Review/Hearing

- a) Can the BCC request more information from a land developer than has been submitted to the planning department? (Carlotta Question #5)
- b) How does the BCC determine that adequate opportunity for mitigation has been offered to the land developer during mitigation negotiations? (Carlotta Question #7)
- c) Can a county commissioner submit new information about a subdivision at the public hearing? (Carlotta Question #8)
- d) When new information is submitted during a subdivision hearing, how can the BCC determine if the new information is significant enough to remand the application to the planning department/board for further review? (Carlotta Question #9)
- e) Brainstorm process for BCC to clearly define additional findings and conditions for staff during public hearings.
- f) Open Lands Board Contribution – Finding for amount? Clarification for the use of the contribution?
- g) Discussion about school contributions in relation to capital facilities
- h) Recently there has been discussion at hearings about the negative impacts of domestic wells on agricultural water user facilities – what is the basis?
- i) Discussion about general fund contribution/fiscal impact analysis

#### 10. Minutes/PPD Signatures

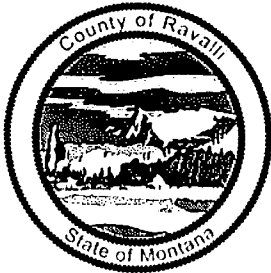
- a) BCC minutes – planners are spending major amounts of time to edit
- b) Approval of minutes are needed to issue the PPD – this is taking a long time
- c) Getting signatures from BCC on PPDs is also taking a long time

#### 11. Miscellaneous

- a) If the County adopts impact fees, will developers will be required to pay the full fee if they have already paid a voluntary contribution?

► The Board met for discussion and possible decision on External Subdivision Review Contracts for WGM Group, Inc. and WWC Engineering. Present were Planning Director Karen Hughes, Planner Renee Lemon, and Chip Pigman.

Commissioner Grandstaff requested the Planning Staff Report. Renee read the report as follows:



## ACTION

## REQUEST FOR COMMISSION

OG-08-02-129

Meeting: February 19, 2008 @ 11:00 a.m.  
Subject: Contracts for Subdivision Review

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### I. ACTION REQUESTED

This is a request from the Planning Department to accept and sign the following contracts for subdivision review:

1. Agreement for Consulting Services between Ravalli County and WGM Group, Inc. (Draft attached.)
2. Agreement for Consulting Services between Ravalli County and WWC Engineering. (Draft attached.)

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### II. BACKGROUND

Ravalli County issued a Request for Proposals (RFP) for consultant services to review subdivisions on June 5, 2007. The RFP requested proposals from those seeking to be included in a pool of consultants qualified to review subdivisions and those also interested in reviewing three specific subdivisions (Hawks Landing, FlatIron, and Legacy Ranch). The Board of County Commissioners (BCC) chose WGM Group, Inc. and WWC Engineering to be included in the pool of consultants qualified to review subdivisions. The BCC specifically chose WGM to review the Hawks Landing Major Subdivision, and WWC to review the FlatIron Major Subdivision and Legacy Ranch Major Subdivision.

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Last fall, I emailed the Planning Department's recommended approach to developing the contracts for the review of Hawks Landing, FlatIron, and Legacy Ranch to the BCC. Everyone seemed to agree that the best approach was to have WGM and WWC review the subdivisions independent of the Planning Department. The role of the Planning Department would be to provide the administrative materials that are used in subdivision review (letter templates, checklists, examples of staff reports, etc.), to answer questions, to keep a copy of the subdivision file, and to comment on the final recommendations of the consultants. The draft contracts that are attached reflect this approach.

Due to litigation, the creation of the contracts was delayed until now. The Planning Department is completing a second round of element review this week for Hawks Landing, FlatIron, and Legacy Ranch. After the applications are deemed elementally complete, sufficiency review will begin. I anticipate that this will happen quickly so it is important that these contracts are put in place as soon as possible.

WGM Group, Inc. will be attending the meeting to answer questions. WWC Engineering will be available by phone.

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### III. PLANNING STAFF'S RECOMMENDED MOTION

That the Agreement for Consulting Services between Ravalli County and WGM Group, Inc. and the Agreement for Consulting Services between Ravalli County and WWC Engineering be signed and accepted.

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**REMAINING ISSUES:** Any questions that the BCC may have.

**FISCAL IMPACT:** **WGM Group, Inc. Contract** – estimated \$25,587.50 for Hawks Landing  
**WWC Engineering Contract** – estimated \$29,232.00 for FlatIron and estimated \$29,928.00 for Legacy Ranch  
*(Staff Note: Per the settlement agreement, the consultant fees will first be paid from the application fees already collected from the applicant. Consultant fees beyond that will be collected from the applicants.)*

**ATTACHMENTS:** Draft Agreement for Consulting Services between Ravalli County and WGM Group, Inc.  
Draft Agreement for Consulting Services between Ravalli County and WWC Engineering

**STAFF:** Renee Lemon

**DATE:** February 14, 2008

**CC:** Alex Beal  
WGM Group, Inc.  
WWC Engineering

Commissioner Rokosch stated he has a number of questions regarding the contract language for these agreements. Board discussion followed regarding the scheduled meeting for tomorrow and how it involves today's agenda.

Renee gave the background regarding RFP for consultant services to review three specific subdivisions. She stated Hawks Landing and Legacy Ranch were deemed elementally complete to continue and they have 30 days to be sufficiently reviewed.

Commissioner Rokosch stated the Board does need to stay within the statutory timeframe. He discussed establishing the findings of fact with creditable evidence. Commissioner Driscoll asked about the timeframe. Renee replied 30 working days. Commissioner Driscoll asked are we forced to move forward without looking at the extra concerns of the Board. Karen replied it depends on where the Board is getting in the additional information. She stated she does not know what had transpired last week. Commissioner Chilcott stated we have certain regulations. Do the questions fall within the current regulations? Commissioner Rokosch replied that seems to be the question. We are waiting for a reply from the County Attorney. Commissioner Chilcott stated we have 30 days and he is under the assumption the County Attorney's Office has reviewed the contracts presented. He has reviewed the questions and his concern is the answers would take months.

Commissioner Driscoll stated the way we do business here and how other counties to business are different. The question is can we as a Board, ask these questions and still be within the time limit.

Commissioner Grandstaff stated Commissioner Chilcott and Commissioner Thompson are in favor of approving the contracts today and then amend them to include the questions at a later date. Commissioner Rokosch stated he believes they should wait upon the sufficiency review and information provided in particular to analysis to other information provided. Commissioner Chilcott stated we have regulations. He does not know how the questions can be implemented with the clock running and a limited time frame.

Commissioner Rokosch asked with the clock ticking, can the Planning Department review each element in detail and is it a scenario at that point for the comprehensive. Karen replied the goal is for local government to take all the information received is sufficient. You can ask for more if they are insufficient. The goal is to do a full scale efficiency review. Commissioner Driscoll asked about the transportation issues for the review. She asked if the Board could request a traffic study for it to be sufficiently mitigated and do they have to stick with what they have. Renee replied it is a legal question. In her opinion, you can ask questions directed towards the six criteria.

Commissioner Grandstaff stated the question is how to implement these questions into these contracts. Commissioner Thompson stated we are dealing with timelines and an RFP that was placed before these firms and agreed upon. It is his opinion to issue a new RFP. Commissioner Rokosch replied a new RFP is not necessary. It is the Board's

responsibility to investigate every detail before making a decision. Commissioner Thompson stated you are asking legal questions and there is not one person in this room who can answer those. Commissioner Rokosch replied the questions are being reviewed by legal counsel.

Commissioner Rokosch asked how the fees are collected and where are we at? Karen replied as the balances build up and they have to pay it, then they invoice the developers. Commissioner Chilcott stated the bottom line is they are what they are and the reviews stand beside those. We have to do the reviews rather the cost is \$70,000 spent. Karen replied it is \$70,000 total collected from these three subdivisions.

Commissioner Thompson stated he is not in favor of waiting for legal answers to questions that may or may not be implemented into these contracts. He stated it creates undue hardship to the Planning Department with an already time restrained schedule.

Chip Pigman stated the efficiency review is 11 pages long. He asked if the intention of the Board is to add to this list. He has already waited two years and it has already gone through the efficiency review. Commissioner Grandstaff replied no, not to add but how those questions are interpreted.

Commissioner Chilcott stated he does not see why the Board cannot approve the contracts today to move forward and then amend the contract when the questions have a legal opinion.

Karen asked about Tasks 3, 5, and 6 general statements covering the questions.

Commissioner Rokosch stated the sufficiency review is the time to set the stage for the Board to decide what mitigation levels are appropriate and necessary. He would like to see it detailed a bit more. He would like to see a list of the types of information the Board can be expecting for the review process. Renee replied it is ok to ask general questions not specific questions about subdivisions. She suggested funneling the questions through the County Attorney's Office. She suggested having a more formal process. Commissioner Chilcott stated this of the Board's quasi-judicial role and in his opinion it is illegal to discuss the subdivision prior to the review. He stated he believes the Board should be cautious in discussing subdivisions prior to having an application in front of them. Commissioner Grandstaff disagrees. The contracts specifically list three subdivisions and she believes if they are specifically listed, then the Board can discuss them. Commissioner Chilcott stated he has sat through numerous court cases. Material cannot be presented prior to the trial. It is presented at the time of the trial. Commissioner Driscoll stated she disagrees. The Board should have the right to ask any questions in regard to making the best decision. Board discussion followed regarding the ambiguity of the law that leaves open a lot of room for interpretation.

**Commissioner Rokosch made a motion to continue this meeting to Wednesday at 4:30 p.m. Commissioner Driscoll seconded the motion. Commissioner Grandstaff,**

**Commissioner Rokosch and Commissioner Driscoll voted 'aye'. Commissioner Thompson and Commissioner Chilcott voted 'nay'. Motion carried.**

Minutes: Glenda Wiles

► Commissioner Driscoll left to attend a Missoula Transportation Planning Coordinating Committee meeting for the remainder of the day.

► The Board met for approval of adding an additional \$1,200 to GEUM Consulting Contract for Land Suitability. Planner Renee Lemon presented a Request for Commission Action as follows:

.....

Commissioner Chilcott made a motion to have the Chair execute this contract for services with GEUM Consulting. Commissioner Rokosch seconded the motion and all voted "aye".

► Glenda brought forth her concern of a recent request from Johnson Controls for an asbestos report at the Courthouse and Administrative Building so they can move forward on their Energy Report Contract. Glenda stated Maintenance Supervisor Brian Jameson asked Glenda if there were any existing reports on the buildings because they had asked him to bring this information to them. Glenda stated there are two existing reports that were done on the Courthouse during the Phase 1 and Phase 2 renovation (three or four years ago) but not on the complete building. The Commissioners indicated this request should have been made through their office and to have the Project Director of Johnson Controls visit with them on this request as it could be a costly endeavor.

► The Board reviewed three bids for the removal of Tree #15 on Fairgrounds Road as follows:

1. A-1 Tree Service: Removal of tree, clean up of tree and debri, grind stump at \$3,000
2. Bitterroot Tree Service: Removal of tree, clean up of tree and debri, grind stump at \$2,343.00
3. Asplundh Tree Co: Removal of tree, clean up of tree and debri, grind stump at \$2,400.00

Commissioner Chilcott made a motion to award the bid to BitterRoot Tree Service for removal by Friday Feb 22<sup>nd</sup> with the proper insurance and Certificate of Exemption or the Commissioners will move to the second lowest bid by Asplundh. Commissioner Thompson seconded the motion and all voted "aye".

► The Board reviewed Resolution No. 2260 which allows for the sale of numerous old county computers because these computers are no longer necessary for conducting

business. Commissioner Thompson made a motion to adopt Resolution No. 2260. Commissioner Chilcott seconded the motion and all voted "aye".

► The Board reviewed Resolution No. 2261 which allows for the disposal of the AIS Election Machine, Model 4600X because the machine is no longer necessary for conducting business and there is no market to sell the machine. Commissioner Thompson made a motion to adopt Resolution No. 2261 and Commissioner Chilcott seconded the motion and all voted "aye."

► The Board reviewed the Supplemental Conditions to the Standard Engineering Contract for TSEP. Road Supervisor David Ohnstad was present for this discussion. This is supplemental agreement for an existing contract that creates an engineering report that accompanies the inventory for bridge replacement to be considered for grant monies. Commissioner Chilcott made a motion to approve of the supplemental conditions to the Standard Engineering Contract for TSEP (Treasure State Endowment Project).

► The Board reviewed the request for final approval on Mountain View Orchards Block 8, Trail 22-A. Commissioner Chilcott made a motion to grant final approval to this subdivision as recommended by Planning. Commissioner Rokosch seconded the motion and all voted "aye".

► Board reviewed the Deputy and Dispatch Contract for Collective Bargaining. Administrative Director Skip Rosenthal was present for this discussion explaining the bargaining unit agreements for the Deputies and Dispatchers. Commissioner Chilcott made a motion to ratify the two-year Collective Bargaining Agreement with the Deputies. Commissioner Rokosch seconded the motion and all voted "aye". Commissioner Chilcott made a motion to ratify the two-year Collective Bargaining Agreement with the Dispatchers. Commissioner Thompson seconded the motion and all voted "aye".

**Ravalli County Board of County Commissioners (BCC)  
Ravalli County Planning Board  
Ravalli County Attorney's Office  
Ravalli County Planning Department**

**Public Meeting**

Discussion about Subdivision Review in Ravalli County  
BCC Discussion and Possible Decision on Subdivision Review Contracts

**February 20, 2008 at 3:00 P.M.  
Commissioners Meeting Room  
3<sup>rd</sup> Floor, 215 S. 4<sup>th</sup> St.  
Hamilton, MT 59840**

**Meeting Goals**

- Identify and discuss high priority questions/issues for subdivision review in detail
- BCC to complete discussion/decision on subdivision review contracts
- Determine the next steps on other questions/issues

1. **Introductions (5 minutes)**
2. **Review Master List of Subdivision Review Questions – Is anything missing? (20 minutes)**
3. **Identify high priority questions (25 minutes)**

Are the questions/issues below high priority questions/issues for the BCC in subdivision review? High priority for today is suggested to be those questions/issues that need to be addressed to resolve subdivision review contracts and to address concerns about pending subdivision reviews in the immediate future.

- A) Can the BCC request specific information from applicants related to one of the required application items in Section 3-1-5? If so, what is the best mechanism for that to occur and when should it occur in the review process? Following is a list of specific examples:
- (i) Could the BCC request specific water availability/quality information related to one of the required application items, such as the summary of probable impacts on the natural environment (Section 3-1-5(a)(xlii))? How could the BCC figure out what kind of water information/studies are needed? Who at the County has the expertise to review the information? Could the County contract a hydrologist or other expert? How would that expert be paid? In this specific case, how might information about water availability/quality be utilized in the subdivision review?
  - (ii) Could the BCC request a specific study on how the change in irrigation practices on a proposed subdivision might affect domestic wells and/or irrigation practices related to agriculture in the area, which may be information related to the summary of probable impacts on agricultural water users and natural environment?

- (iii) Could the BCC request a traffic study for an intersection that includes a State highway, which may be information necessary for a complete evaluation of the traffic impact analysis (Section 3-1-5(xxxiv)) or summary of probable impacts on local services/public health and safety (Section 3-1-5(a)(xli))?
- (iv) Could the BCC request specific information on emergency response times, which may be related to the summary of probable impacts on public health and safety? Or is it the responsibility of the County to provide this information?
- (v) Could the BCC request specific information on the impacts of a subdivision on the viewshed, which may be related to the summary of probable impacts on the natural environment?

**4. Discuss high priority questions in detail (40 minutes)**

**5. BCC Discussion/Decision on Subdivision Review Contracts (20 minutes)**

**6. Discussion on the Next Steps (10 minutes)**

- A) Any necessary follow-up to high priority questions/issues**
- B) Identify any other questions that need resolution related to subdivision review**
- C) Staff (Planning and Legal Counsel?) organizes the questions/issues and suggests priorities for responses**
  - (i) Moderate priority
    - (1) What issues could be addressed that do not require revisions to the current subdivision regulations
  - (ii) Low priority
    - (1) What issues must be addressed through revisions to the subdivision regulations
- D) BCC determines priority listing and directs staff (Planning and Legal Counsel) to provide written comment on questions**

## **Master List of Subdivision Review Questions**

1. In Ravalli County, what is the goal of subdivision review? What are the objectives needed to accomplish that goal?
2. Pre-application Conference
  - a) At what point can Planning Board or BCC members review the application? (Carlotta Question #6)
3. Application Requirements
  - a) Are there items missing from the required application elements in Section 3-1-5 of the Subdivision Regulations?
  - b) Should the County require certain application elements for subdivisions that meet a certain lot number, acreage, and/or density threshold? Following is a list of ideas:
    - Sidewalks; trails; walking paths to bus stops; shelters at bus stops; bike path network to subdivisions and along major collector roads; road connectivity; alternative or emergency accesses; community parks/gardens/playgrounds/pastures/barns; community maintenance agreements for common areas and trails; encouraging community water and sewer systems; community power generation and distribution; community trash incinerators and heating plants; wind or solar generation; and high tech wood burning stoves and fireplace inserts.
  - c) Ben Hillicoss and Sonny LaSalle proposed a set of wildland urban interface standards for the Subdivision Regulations around 2001. Why haven't these regulations been adopted?
4. Element Review
5. Sufficiency Review
  - a) What additional information should planning staff be requesting under existing items in Section 3-1-5? Can staff request this information now or will it require a modification to the Subdivision Regulations?
  - b) Can the BCC request specific information from applicants related to one of the required application items in Section 3-1-5? If so, what is the best mechanism for that to occur? Following is a list of specific examples:
    - Could the BCC request specific water availability/quality information related to one of the required application items, such as the summary of probable impacts on the natural environment (Section 3-1-5(a)(xli))? How could the BCC figure out what kind of water information/studies are needed? Who at the County has the expertise to review the information? Could the County contract a hydrologist or other expert?
    - Could the BCC request a study on how the change in irrigation on a proposed subdivision might affect domestic wells and/or irrigation practices related to agriculture in the area, which may be information related to the summary of probable impacts on agricultural water users and natural environment?
    - Could the BCC request a traffic study for an intersection that includes a State highway, which may be information related to the traffic impact analysis (Section (3-1-5(xxxiv)) or summary of probable impacts on local services/public health and safety (Section 3-1-5(a)(xli))?

- Could the BCC request information on emergency response times, which may be related to the summary of probable impacts on public health and safety? Or is it the responsibility of the County to provide this information?
- Could the BCC request information on the impacts of a subdivision on the viewshed, which may be related to the summary of probable impacts on the natural environment?

#### 6. Planning Staff Review/Reports

- a) How does staff determine whether the effects of development are significant enough to require mitigation? This question also pertains to Planning Board and BCC review later in the process. (Carlotta Question #2)
- b) Can the County clearly define significant impacts of each of the six subdivision review criteria? For example, the County could define a significant impact on agriculture as any proposal that takes more than 5.00 acres of prime agricultural land out of production.
- c) Does State law prohibit the County from establishing additional review criteria (beyond the six) in the Subdivision Regulations?
- d) How does staff determine whether the effects have been sufficiently mitigated? This question also pertains to Planning Board and BCC review later in the process. (Carlotta Question #3)
- e) Does insufficient mitigation constitute grounds for recommending denial of a subdivision? This question also pertains to Planning Board and BCC review later in the process. (Carlotta Question #4)
- f) How is the Growth Policy currently included in staff's review? Should staff take a different approach?
- g) How should staff deal with bus turnouts?
- h) Why does staff include a condition recommending no wood stoves instead of requiring it? Discussion about recent litigation regarding Lewis and Clark County and building codes.
- i) Why doesn't staff use the Farmland of Local Importance classification when determining the impacts on agriculture? Discussion about farmland classification of soils and impacts to agriculture.
- j) Discussion about current process of parkland dedication and cash-in-lieu.

#### 7. Scheduling of Planning Board Meetings/BCC Hearings

- a) Overview of current procedure
- b) Overview of upcoming subdivision meeting/hearing schedule
- c) Problems with current procedure - Planning staff is having difficulty scheduling hearings for subdivision review. BCC have not been blocking out available time, meetings have had to be rescheduled which costs time and money for re-notification, and meetings are starting late.

#### 8. Planning Board Review/Meetings

- a) Review current procedure for Planning Board review
- b) How does the Planning Board develop findings of fact and the credible evidence to support them as they pertain to the six subdivision review criteria, particularly when the findings go beyond, or are different from, the conclusions in the staff report? This question also pertains to the BCC review later in the process. (Carlotta Question #1)

- c) BCC idea for expanding role of Planning Board. Discussion on the formation of a Planning Board subcommittee to address Phase II zoning and sustainability.
- d) If a Planning Board member misses a meeting and has a major concern, what is the proper way to communicate the concern to the BCC?
- e) Can a Planning Board member issue a minority report if their concern isn't reflected in the Planning Board's recommendation?

#### 9. BCC Review/Hearing

- a) Can the BCC request more information from a land developer than has been submitted to the planning department? (Carlotta Question #5)
- b) How does the BCC determine that adequate opportunity for mitigation has been offered to the land developer during mitigation negotiations? (Carlotta Question #7)
- c) Can a county commissioner submit new information about a subdivision at the public hearing? (Carlotta Question #8)
- d) When new information is submitted during a subdivision hearing, how can the BCC determine if the new information is significant enough to remand the application to the planning department/board for further review? (Carlotta Question #9)
- e) Brainstorm process for BCC to clearly define additional findings and conditions for staff during public hearings.
- f) Open Lands Board Contribution – Finding for amount? Clarification for the use of the contribution?
- g) Discussion about school contributions in relation to capital facilities
- h) Recently there has been discussion at hearings about the negative impacts of domestic wells on agricultural water user facilities – what is the basis?
- i) Discussion about general fund contribution/fiscal impact analysis

#### 10. Minutes/PPD Signatures

- a) BCC minutes – planners are spending major amounts of time to edit
- b) Approval of minutes are needed to issue the PPD – this is taking a long time
- c) Getting signatures from BCC on PPDs is also taking a long time

#### 11. Miscellaneous

- a) If the County adopts impact fees, will developers will be required to pay the full fee if they have already paid a voluntary contribution?

# SIGN IN SHEET - COMMISSIONERS MEETING

PLEASE PRINT YOUR NAME LEGIBLY

DATE: 2-20-2008

MEETING: \_\_\_\_\_

LYLE G. ROOT

Pat Scott

Wilko + Theresa Overell

Penny Howe

Steve Slagle

Deidre Slagle

Quincy Smith

Jimmy Stoddard

Jim Winkler

Claire Kelly

Roger De Haan

Lyle G. Root

Paul Forsting

John Kellogg

John Hart

JR Inman

JW Dawson

KRISTIN SMITH, WGM GROUP

Wieniewski